



UNITED STATES PATENT AND TRADEMARK OFFICE

AS
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,874	07/09/2001	Hirozo Amano	70101	5943

7590

04/16/2003

McGLEW AND TUTTLE, P.C.
SCARBOROUGH STATION
SCARBOROUGH, NY 10510-0827

EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
----------	--------------

1772

5

DATE MAILED: 04/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/901,874

Applicant(s)

AMANO ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Claims 1-15 are pending.

Summary of Base Claims

2. As best understood by the examiner, claim 1 covers the structure:

Inner L/Interm L/Base L//Base L/Interm L/Inner L

wherein:

Inner L= inner film layer,
Interm L=intermediate layer,
Base L=base film layer,
/=interface between layers in a multilayer film,
//=seal between base film layers.

3. As best understood by the examiner, claims 6 and 11 cover the structure:

L 1:Interm L::L 2

wherein:

L 1= layer 1,
L 2= layer 2,
:=low peel strength between L 1 and Interm L,
::=higher peel strength between Interm L and L2.

Rejections Withdrawn

4. The 35 USC 103 rejection of claims 1, 2, 6, and 7 as unpatentable over Hutschenreuter et al (US 4,399,839) in view of Bradt (US 6,238,788), as set forth in section 4 of the 12 September 2002 office action (Paper No. 3), is withdrawn in view of applicants' arguments in the response of 12 December 2002 (Paper No. 4).

Art Unit: 1772

5. The 35 USC 103 rejection of claims 3, 4, 8, and 9 as unpatentable over Hutschenreuter and Bradt further in view of Weiss (US 5,459,978), as explained in section 5 of Paper No. 3, is withdrawn in view of applicants' arguments in Paper No. 4.

6. The 35 USC 103 rejection of claims 3-5 and 8-10 as unpatentable over Hutschenreuter and Bradt further in view of Suzuki et al (EPO 0282773A1) as recited in section 6 of Paper No. 3, is withdrawn in view of applicants' arguments in Paper No. 4.

New Rejections

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claims 1, 2, 6, 7, and 11-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Bradt (US 6,238,788).

Bradt describes, in its abstract, a multilayer film comprising a heat seal layer a), a interface layer b) and a support layer c). The multilayer film has a peel strength of less than 200 grams per liner inch when layer a) is sealed to itself (see the last four lines of the abstract). At col. 5, lines 35-47, it teaches that the interface layer provides "easy opening' delamination" (line 41) because of the lower peel strength between the interface layer b) and the heat seal layer a).

Thus, Bradt shows the structures c)/b)/a) and c)/b)/a)//a)b)/c), with lower peel strength between a) and b), which showings anticipate the structures of claims 1, 6, 11 and 12.

The peel strength between a) and b) layers is less than 200 grams per inch (col. 5, lines 41-42), so that the limitations of claims 2 and 7 are satisfied.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 1, 2, 6, 7, and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradt in view of applicants' admission in the paragraph bridging pages 1 and 2 of the specification.

Bradt is discussed above.

It fails to teach the use of its films in heat sealed food casings.

The paragraph bridging pages 1 and 2 of applicants' specification ("the bridging paragraph"), describes as known, packaging films used in food casings that are made by heat sealing the top and rear surfaces of the film to each other to form the structure:

film top surface//film rear surface

wherein:

//=seal between the surfaces of the monolayer film.

The citations are analogous because they both deal with heat sealed packaging.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the multilayer packaging film of Bradt to make the admittedly known casings of the bridging paragraph in order to provide easy opening delamination in the casings.

Art Unit: 1772

The motivation to employ the films of Bradt to make the casings described in the bridging paragraph is found at col. 5, lines 35+ of Bradt, where the easy opening delamination of its multilayer films is taught.

It is deemed desirable to make casings easily delaminable in order to facilitate consumer's attaining access to the casing's contents.

13. Claims 3, 4, 8, 9, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradt and the admission in the bridging paragraph as applied to claims above, and further in view of Weiss (US 5,459,978).

Bradt and the bridging paragraph are described above.

They fail to teach the opening means and spaced sealing point of claims 3, 4, 8, 9, and 13.

Weiss is described in section 5 of Paper No. 3. Note that Figure 2 of Weiss shows that the heat seals 15 and 14 are spaced from the edges 13 and 11 of its peel seal package. The Weiss flange is provided to facilitate opening (col. 8, lines 3-8).

The citations are analogous because all deal with heat sealed packages.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the flange and spacing of Weiss when making peel seal casings for food, such as those suggested by the combination of Bradt and applicants' admission.

The motivation to employ the flange and spacing of Weiss to make the casing suggested by Bradt and the admission is found in Figure 2 and at col. 8, lines 3-8 of

Art Unit: 1772

Weiss where the spacing and the flange are said to facilitate opening of Weiss's packaging.

It is deemed desirable to employ facilitate opening of food casings in order to make it easier for consumers to gain access to the contents of the casings.

14. Claims 3-5, 8-10 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradt and applicants' admission as applied to claims 1, 2, 6, 7, and 11-12 above, and further in view of Suzuki (EPO 0282773).

Bradt and applicants' admission are discussed above.

They fail to teach the use of V-notches in their packaging.

Suzuki is discussed in section 6 of Paper No. 3.

The citations are analogous because they all deal with heat sealed packaging.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the V-notches of Suzuki in the casings suggested by the combination of Bradt and the admission in order to facilitate the opening of the casings.

The motivation to employ the V-notches of Suzuki in the casings suggested by the combination of Bradt and the admission is found at page 5, lines 53+ of Suzuki, where the use of such notches to facilitate the opening of packages is taught.

It is deemed desirable to facilitate the opening of food casings in order to make it easier for consumers to gain access to the casings' contents.

Response to Arguments

Art Unit: 1772

15. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700

SMN/smn
09901874(5)
11 April 2003